

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PETER ALLEN, BRIAN BERNARD, MARK  
DANIELS, SHANNON DICKINSON, AARON  
DOCKERY, EDDIE FIELDS, JOHN GRADIA,  
ANGEL HERNANDEZ, SPENCER JACKSON,  
HUGH KNIGHT, TERRY MATHIS, HAROLD  
ORTIZ, SEAN PRITCHETT, RASHID RAHMAN,  
FELIPE RIVERA-CRUZ, WAYNE STEWART,  
MICHAEL VATTIATO, DERRICK WILLIAMS,  
on behalf of themselves and others similarly situated,

**DR. MOORES' PRETRIAL  
ORDER**

Case No. 1:19-cv-8173

Plaintiffs,

-against-

CARL KOENIGSMANN, MD; JOHN MORLEY,  
MD; SUSAN MUELLER, MD; DAVID S.  
DINELLO, MD; JOHN HAMMER, MD; ANN  
ANDOLA, MD; MIKHAIL GUSMAN, MD; CHUN  
LEE, MD; KATHLEEN MANTARO, MD; PETER  
BRASELMANN, MD; DAVID KARANDY, MD;  
QUTUBUDDIN DAR, MD; ALBERT ACRISH, NP;  
KRISTIN SALOTTI, NP; MARY ASHONG, NP;  
JOHN DOE #2, MD; JANE OR JOHN DOE, MD #3  
- #50; AND JANE OR JOHN DOE, NP OR PA, #1 -  
#50,

Defendants.

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**I. Full Caption of the Action**

The full caption of the action is reproduced above.

**II. Trial Counsel**

For Defendant Moores:

Oriana L. Kiley, Esq.  
William S. Nolan, Esq.  
Gabriella R. Levine, Esq.

Jennifer M. Thomas, Esq.  
Whiteman Osterman & Hanna LLP  
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### **III. Subject Matter Jurisdiction**

For the reasons articulated more fully in Dr. Moores' opposition to Plaintiffs' motion for a preliminary injunction (Dkt. No. 449, 489), post-hearing brief (Dkt. No. 536), motion for a stay of this Court's preliminary injunction order (Dkt. No. 606-1), this Court lacks subject matter jurisdiction over this trial for a permanent injunction because: (1) Plaintiffs' arguments in support of their claim for permanent injunctive relief are based on events and issues that were not alleged in and otherwise post-date the filing of the Second Amended Complaint, (2) Plaintiffs do not have a cognizable claim for equitable relief tied to their Second Claim for Relief, which is the alleged basis for the injunction, and, finally, (3) Plaintiffs' request for injunctive relief has been rendered moot. See, e.g., Fox v. Bd. of Trustees of State Univ. of New York, 42 F.3d 135, 140 (2d Cir. 1994) ("When a case becomes moot, the federal courts lack[] subject matter jurisdiction over the action.") (internal quotation marks and citations omitted).

### **IV. Claims and Defenses**

#### **Defenses Which Remain to Be Tried /Have Previously Been Asserted**

Dr. Moores will raise the following defense during the permanent injunction hearing: (1) that Plaintiffs will not be able to satisfy their burden to prove, by a preponderance of the evidence, actual success on the merits of their Eighth Amendment deliberate indifference claim against any DOCCS medical provider (i.e., their second cause of action), irreparable harm and that a balance of the equities weighs in their favor.

The following defenses have been previously asserted: (1) that Plaintiffs' request for injunctive relief is moot, (2) that Plaintiffs lack standing, and (3) Plaintiffs' request for injunctive relief is barred by the Eleventh Amendment.

**V. Fact Finder and Trial Length**

This matter is to be tried by the Court without a jury, and it is anticipated that 5 days will be needed for trial.

**VI. Consent to Trial by Magistrate Judge**

The parties have not consented to a trial of this matter by a magistrate judge.

**VII. Stipulation or Statements of Law or Fact Agreed to By All Parties**

None at this time. Dr. Moores reserves the right to amend any stipulation of law or fact agreed to by the parties, up to and including commencement of the trial.

**VIII. Witnesses**

Dr. Moores may call any of the following witnesses either on her case-in-chief or on rebuttal:

- Dr. Carol Moores (in person);
- Dr. Afsar A. Khan (video);
- NP Albert Acrish (video);
- Dr. Ann Andola (video);
- NP Mary Ashong (video);
- Dr. David DiNello (video);
- Dr. John Hammer (video);
- Dr. Kathleen Mantaro (video);
- Dr. David Karandy (video);
- Dr. Chung Lee (video);

- Dr. Susan Mueller (video);
- NP Kristin Salotti (video);
- Dr. Paula Bozer (video);
- Dr. Mikhail Gusman (video);
- Dr. John Morley (video);
- NP Valerie Monroe (video);
- NP Shibi Kacchapilly (video);
- NP Terrie Armbruster (video);
- NP Ashley Harris-Baker (video);
- Dr. Veronica Ruiz (video);
- Dr. Hend Abdelwahab (video);
- NP Randie Schrader (video);
- Dr. R. D'Amico (video);
- NP Sue Devlin-Varin (video);
- NP Ifeoma Awaka (video);
- NP Mahnaz Sullivan-Davachi (video);
- NP Angela Bode (video);
- Dr. Ellen Gomprecht (video);
- Dr. Brian Connolly (video);
- NP Brandi Corigliano (video);
- Dr. Arul Kannan (video);
- Dr. Pritti Mandalaywala (video);
- Dr. Kyoung Kim (video);
- NP Dahlia Wiggan (video).

Dr. Moores reserves the right to amend her Witness list at any time up to and including commencement of the trial either for her case-in-chief or for rebuttal.

**IX. Deposition Testimony to be Offered at Trial**

Dr. Moores may offer the following deposition testimony either in her case in chief or on rebuttal:

- Mark Daniels Transcript, pp. 151:18-155:18; pp. 172:3-175:3; pp. 180:24-184:6, pp. 188:18-190:4
- Wayne Stewart Transcript, pp. 105:25-108:11

- Terry Mathis Transcript – Mr. Mathis was deposed on July 14, 2023. Upon receipt of his transcript, Dr. Moores will provide an amended Order to include which pages she would like to read into the record.

Defendant Moores reserves the right to read into evidence the deposition testimony of any witness who is not available to testify, or to impeach the witness.

**X. Exhibit List**

Defendant's List:

<u>Exhibit Number</u>	<u>Description</u>	<u>Objection</u>
D-1	MWAP POLICY 1.24	
D-2	MWAP Policy 1.24A	
D-3	Medical Records for Ronald Alston RALSTON 000001- RALSTON 000146	
D-4	Medical Records for Thomas Briel BRIEL DEF 000001- BRIEL DEF 000173	
D-5	Medical Records for Marc Confessore CONFESSORE DEF 000001 – CONFESSORE DEF 000627	
D-6	Medical Records for John Crosby CROSBY DEF 000001 – CROSBY DEF 001451	
D-7	Medical Records for Thomas Curry CURRY DEF 000001 – CURRY DEF 000123	
D-8	Medical Records for Mark Daniels MDANIELS DEF 000001 – M DANIELS DEF 000069	
D-9	Medical Records for Anthony Griggs GRIGGS 000001 – GRIGGS 000102	
D-10	Medical Records for John Hinespeter HINESPETER DEF 00002 – HINESPETER DEF 000335	
D-11	Medical Records for Anthony Jackson A JACKSON DEF 000001 – A JACKSON DEF 000062	
D-12	Medical Records for Eric Lindemann	

	LINDEMANN DEF 000001 – LINDEMANN DEF 000146	
D-13	Medical Records for Terry Mathis OAG TM 002561 – OAG TM 002796	
D-14	Medical Records for Rafael Montanez MONTANEZ DEF 000001 – MONTANEZ DEF 000707	
D-15	Medical Records for Ramal Myriee MYRIEE 00001 – MYRIEE 000233	
D-16	Medical Records for Robert Oleman RO 00001 – RO 000715	
D-17	Medical Records for James Pine PINE DEF 000001 – PINE DEF 000183	
D-18	Medical Records for Alan Sherry SHERRY 000001 – SHERRY 000476	
D-19	Medical Records for Wayne Stewart WS 002752 – WS 002986	
D-20	Medical Records for Miguel Tirado TIRADO 000001 – TIRADO 000132	
D-21	Medical Records for Richard Vasquez RV 000001 – RV 000068	
D-22	Medical Records for Kenneth Windley WINDLEY DEF 000806 – WINDLEY DEF 000925	

Dr. Moores reserves the right to amend her Exhibit list at any time up to and including commencement of the trial. Dr. Moores further reserves the right to refer to any exhibits previously entered into the record during the preliminary injunction trial.

Respectfully submitted,

WHITEMAN OSTERMAN & HANNA LLP

By: *s/Oriana Kiley*

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SO ORDERED \_\_\_\_\_, 2023

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Hon. Loretta A. Preska, U.S.D.J.